SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 118

118

CAPITOL GREYHOUND LINES, PENNSYLVANIA GREYHOUND LINES, INC., AND RED STAR MOTOR COACHES, INC.,
Appellants,

vs.

ARTHUR H. BRICE, COMMISSIONER OF MOTOR VEHICLES, STATE OF MARYLAND

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

STATEMENT AS TO JURISDICTION

CLARENCE M. MILES,
BENJAMIN C. HOWARD,
Counsel for Appellants.

MILES, WALSH, O'BRIEN & MORRIS,
Of Counsel.

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IN THE COURT OF APPEALS OF MARYLAND

W. LEE ELGIN, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland,

Appellant,

v.

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Appellee

W. LEE ELGIN, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland,

Appellant,

v.

PENNSYLVANIA GREYHOUND LINES, INC., a Body Corporate, Cleveland, Ohio,

Appellee

W. LEE ELGIN, Commissioner of Motor Vehicles, State of Maryland, Baltimore, Maryland,

Appellant,

v.

RED STAR MOTOR COACHES, INC., a Body Corporate, Salisbury, Maryland,

Appellee

STATEMENT AS TO JURISDICTION UNDER RULE 12

The Petitioners and Appellees in the above entitled action, Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., concurrently with their Petition for Appeal and Assignment of Errors,

present herewith their statement in support of their contention that the Supreme Court of the United States has jurisdiction on this appeal to hear this cause and to reverse the final judgment and decree of the Court of Appeals of Maryland, dated March 12, 1949.

A. The Statutory Provisions Believed to Sustain the Jurisdiction

This appeal is entered by virtue of Title 28, Section 1257(2) of the United States Code, which provides for an appeal where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

On January 22, 1948, Petitioners filed in the Superior Court of Baltimore City petitions for Writs of Mandamus to compel the Commissioner of Motor Vehicles of Maryland to issue certificates of title for their motor vehicles without the payment of the tax of 2% of the fair market value of each of the vehicles as provided by Section 25A, Article 66½ of the Annotated Code of Maryland. That Court issued the Writs as prayed, whereupon the Commissioner of Motor Vehicles entered an appeal to the Court of Appeals of Maryland on June 30, 1948. The specific question decided by the Court of Appeals in its opinion (Appendix A), in which it reversed the orders of the lower Court and dismissed the petitions, was that Section 25A, Article 66½, as applied to vehicles used in interstate commerce, is not repugnant to the Commerce Clause of the Federal Constitution as being an unreasonable and unlawful burden on interstate commerce. In reversing, the Court of Appeals of Maryland upheld the validity of that statute. That Court is the highest court in the State in which a decision can be had. It is respectfully submitted, therefore, that jurisdiction of the Supreme Court of the United States attaches in

this cause under Title 28, Section 1257(2) of the United States Code.

B. The Statute of the State the Validity of which is Involved

The statutory provision which the Appellants contest is Section 25A, Article 66½, Annotated Code of Maryland (1947 Cumulative Supplement), starting on page 1123 and continuing to page 1124. This Section is set forth in full below:

> "25A. (Excise Tax for the Issuance of Certificates of Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued.
>
> "(b) The Department of Motor Vehicles shall require every applicant to supply information as it may deem necessary as to the time of purchase, the purchase price and other information relative to the determination of the fair market value.
>
> "(c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland (1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11(e) of said Article 89B.

"(d) Certificates of title for all motor vehicles owned by the State of Maryland or any political subdivision of the State and for fire engines and other fire department emergency apparatus, including ambulance operated by or in connection with any fire department, shall be exempt from the tax imposed by this Section."

C. The Date of the Judgment and Decree Sought to be Reviewed and the Date Upon Which the Application for Appeal is Presented

The Order of the Court of Appeals of Maryland, from which this appeal is taken, was filed on February 10, 1949, with a unanimous opinion, heretofore referred to and hereto appended marked Appendix A.

The Petition for Appeal herein was filed on May 5th, 1949, and was allowed May 5th, 1949.

The adjudication by the Court of Appeals of Maryland was final in its nature on February 10, 1949, since, by its reversal of the orders of the lower Court, it denied the petitions for Writs of Mandamus and Petitioners cannot operate as carriers of passengers for hire by motor vehicle in interstate commerce over the public highways of Maryland, without submitting to the payment of the tax involved.

D. Statement Showing that the Nature of the Case and of the Rulings of the Court was such as to bring the Case within the Jurisdictional Provisions Relied Upon

The Capitol Greyhound Lines, Pennsylvania Greyhound Lines, Inc., and Red Star Motor Coaches, Inc., are all corporations engaged in the transportation of passengers by motor vehicle in interstate commerce. This is a matter of record. (Appendix A, Page 15.) Capitol and Red Star also operate in intrastate commerce within the State of Maryland. (Appendix A, Page 16.) No question has been raised in regard to the power of the State of Maryland to regulate,

control, or tax the operations of Capitol and Red Star as they may relate to their intrastate activity. It is admitted that each of the carriers has complied with all other requirements for the issuance of certificates of title to their motor buses, except for the payment of the tax in question (Appendix A, Page 18.) Thus, the principal question decided in the lower court and in the Court of Appeals of Maryland, as well as that to be determined by this Honorable Court, is "whether this tax, used specifically for road purposes, although having no specific relationship to road use, is a violation of the commerce clause of the Federal Constitution" (Appendix A, page 19).

In 1935, by Chapter 539 of the Acts of 1935, the titling tax was first imposed, at that time in the amount of 1%. The proceeds were to be paid into the "State Emergency Relief Fund". In 1936, it was provided that the proceeds should be paid into the "State Fund for Aid to the Needy". In 1939, by Section 74 of Chapter 277 of the Acts of that year, the impost was raised from 1% to 2% and the proceeds were to be paid into the general funds of the State. Until the change in the Act by Chapter 560 of the Acts of 1947, providing that the funds were to be used first, for servicing the debt on State Highway Construction Bonds and the balance to the Construction Fund of the State Roads Commission, the tax had never been enforced with respect to vehicles used in interstate commerce. It is only now, since the proceeds of the tax have been directed to highway construction purposes, that the State of Maryland seeks to impose this tax, unrelated as it is to highway use, and howsoever inequitably and unreasonably its burden falls upon interstate carriers operating within the State of Maryland.

This constitutional question was first raised in the Superior Court of Baltimore City by each of the carriers, in their petitions for Writs of Mandamus, and was specifi-

cally decided by the Superior Court of Baltimore City in its opinion granting the Writs. That court set forth as the first question to be answered "1. Does the 2% titling tax violate the commerce clause of the Federal Constitution as applied to interstate carriers?" (Appendix B, Page 27.) The court, in holding that the tax was a burden upon interstate commerce, said "Such a tax, aside from being discriminatory and bearing no relation to highway use, is a burden on interstate commerce." (Appendix B, Page 34.) The Commissioner in his appeal to the Court of Appeals of Maryland, contended "that the tax here in question is a reasonable and nondiscriminatory tax imposed upon the privilege of using the roads of the State of Maryland and is constitutional regardless of whether the tax bears any specific relationship to road use." (Appendix A, Page 20.) The Court of Appeals recognized that the validity of this contention was the constitutional issue to be decided. (Appendix A, Page 19.) The validity of the tax was upheld by the Court of Appeals on the ground, *inter alia*, that the tax was not unreasonable or discriminatory, and therefore not an unlawful burden on interstate commerce. (Appendix A, Pages 19 to 24.)

E. Statement of the Grounds Upon Which it is Contended that the Questions Involved are Substantial

Your Petitioners, in their Assignment of Errors, have assigned three items of error as having been committed by the Court of Appeals of Maryland in reversing the orders of the Superior Court of Baltimore City, and thereby sustaining the constitutionality of Section 25A, Article 66½ of the Annotated Code of Maryland. Essentially, however, there is but one basic question presented to the Supreme Court of the United States on this Appeal:

> Is Section 25A, Article 66½ of the Annotated Code of Maryland, providing for a tax of 2% on the fair

market value of a vehicle used in interstate commerce, a discriminatory and unreasonable burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Federal Constitution?

It is contended that this basic question is substantial, of a highly debatable nature, and is of such a character as to affect interstate carriers operating not only in Maryland but throughout the United States. It is further contended that this specific question has not been decided by the Supreme Court of the United States, and is not foreclosed by principals set forth in existing decisions dealing with the right of a State to impose upon motor vehicles engaged in interstate commerce a charge without relation to the use of the roads of the State.

There is no dispute whatever as to the facts. Red Star since the year 1938 has, pursuant to authority vested in it by the Interstate Commerce Commission, operated daily a passenger bus line between Rehobeth, Delaware, and Baltimore, Maryland, a distance of approximately 120 miles, 64 miles of which are over State, State-aid and improved county roads of Maryland. The particular operation is but part of an integrated bus system serving substantial parts of the States of Maryland, Delaware and Pennsylvania.

Capitol, since November 30, 1930, has, pursuant to the authority vested in it by the Interstate Commerce Commission, operated daily a passenger bus line between Cincinnati, Ohio, and Washington, D. C., a distance of approximately 496 miles, 9 miles of which are over State, State-aid and improved county roads of Maryland. Capitol operates over the said route as part of an integrated bus system serving several States.

Greyhound, since April 25, 1930, has, pursuant to authority vested in it and its wholly owned subsidiary (Pennsylvania Greyhound Lines of Virginia, Incorporated), by

the Interstate Commerce Commission, operated daily a passenger bus line between Philadelphia, Pennsylvania and Norfolk, Virginia, a distance of approximately 245.3 miles. Greyhound operates the portion of the route between Philadelphia, Pennsylvania, and the Maryland-Virginia State line, a distance of approximately 172.6 miles, 41 miles of which are over State, State-aid and improved county roads of Maryland. Greyhound operates over the said route as part of a nation-wide integrated bus system. Each of the two latter corporations is duly qualified to do business in the State of Maryland, and all three of the Petitioners are corporations engaged in the business of the public transportation of passengers for hire by motor vehicle.

Over its above designated route, Red Star transported for the period from June 1, 1947, to November 1, 1947, a total of 13,910 passengers, thereby producing total gross revenues of $21,087.18. A total of 5,035 of such passengers traveled in *interstate* commerce, originating from or destined for points within the State of Maryland, thereby producing $11,324.41 of the aforesaid total gross revenues. Over its said route, Red Star also transported, pursuant to authority vested in it by the Public Service Commission of Maryland, passengers traveling in *intrastate* commerce, originating from and destined for points solely within the State of Maryland, and, for the aforesaid period, it ansported 6,577 of such intrastate passengers thereby producing gross revenues of $9,015.89 or approximately 42% of the aforesaid total gross revenues derived from the particular operation.

Capitol, over its above described route, transported, for the period from October 1, 1946 to September 30, 1947, a total of 406,572 passengers thereby producing total gross revenues of $704,450.00. A total of 1,509 of these passengers traveled in *interstate* commerce, originating from or

destined for points within the State of Maryland thereby producing $3,695.80 of the aforesaid total gross revenues. Over its said route, Capitol also transported, pursuant to authority vested in it by the Public Service Commission of Maryland, passengers traveling in *intrastate* commerce, originating from and destined for points solely within the State of Maryland and for the aforesaid period it transported eleven of such passengers thereby producing gross revenues of $3.25 or an infinitesimal fraction of 1% of the aforesaid total gross revenues derived from the particular operation.

Greyhound, and its said wholly owned subsidiary, over its before-described route, transported for the period from October 1, 1946, to September 30, 1947, an estimated total of 168,684 passengers thereby producing total gross revenues of $436,326.92. All of these passengers traveled *exclusively in interstate commerce* from (a) points in the State of Maryland to points located out of the State of Maryland and (b) points out of the State of Maryland to points in the State of Maryland and (c) points out of the State of Maryland to other points out of the State of Maryland via roads or highways in the State of Maryland. Greyhound possesses no authority from the Public Service Commission or any other regulatory agency authorizing it to transport passengers in *intrastate* commerce within the State of Maryland, and during the aforesaid period Greyhound transported no passengers in intrastate commerce within the State of Maryland.

Red Star, Capitol and Greyhound each purchased a public passenger motor vehicle during the year 1947 necessary for use over its respective aforementioned route and obtained from the Public Service Commission of Maryland a permit authorizing it to operate its motor vehicle in interstate commerce over the roads and highways in the State of Maryland embraced in its respective route. The

vehicle purchased by Red Star was purchased on July 18, 1947 at a cost of $18,637.50, the vehicle purchased by Capitol was purchased on July 18, 1947, at a cost of $25,258.70 and that of Greyhound was purchased on October 22, 1947, at a cost of $29,002.60.

On January 8, 1948, Capitol and Greyhound applied to the Department of Motor Vehicles for the issuance of a certificate of title for the public passenger motor vehicles purchased by each of them and presented the required certificate of mileage proposed to be operated in Maryland issued by the Public Service Commission of Maryland. On January 12, 1948, Red Star made a similar application with respect to the vehicle purchased by it and presented a similar certificate of mileage issued by the Public Service Commission to it. Each of these applications was made on forms provided by the Department of Motor Vehicles and tender was made to the Department of the sum of $1.00 with each application for the issuance of a certificate of title for each vehicle. By Section 218 of Article 81 of the Annotated Code of Maryland, as amended by Chapter 326 of the Acts of 1947, the issuance of a certificate of title for a motor vehicle is a prerequisite to the issuance of a registration certificate and distinguishing plates and markers. By Section 20 of Article 66½ of the Annotated Code of Maryland (1943 Supp.) a registration certificate and distinguishing plates and markers are required before any motor vehicle may be operated over State, State-aid, improved county roads, and streets and roads of incorporated towns and cities in the State of Maryland.

With respect to each of the three applications for the issuance of a certificate of title, the action of the Department of Motor Vehicles, acting under the instructions of the Commissioner of Motor Vehicles, was the same in that the application was refused and the sum tendered in payment was returned to the particular applicant. In each instance,

the Commissioner of Motor Vehicles alleged that the amount tendered was insufficient and that the applicant was required to pay an excise tax of 2% on the fair market value of the vehicle for which a certificate of title was sought as a condition precedent to the issuance of the certificate of title and, therefore, to the issuance of a certificate of registration and distinguishing plates and markers. The said excise tax is imposed by Section 25A of Article 66½ of the Annotated Code of Maryland (1947 Supp.). This tax would amount to $372.75 in the case of Red Star, $505.17 in the case of Capitol and $580.00 in the case of Greyhound.

The inequalities of the application of the tax are best shown by a comparison of each company's operation in Maryland with the entire route traveled and the amount of tax sought to be charged against each of the Appellees as shown by the following table:

	Entire Route Traveled	Operation in Maryland	Amount of Tax
Red Star	120 Miles	64 Miles	$372.75
Capitol	496 Miles	9 Miles	505.17
Greyhound	172 Miles	41 Miles	580.00

On January 22, 1948, each of the Appellants filed in the Superior Court of Baltimore City a petition for a Writ of Mandamus, to compel the Commissioner of Motor Vehicles (1) to accept the Petitioners' applications for the issuance of a certificate of title for their respective motor vehicles and retain the sum of One Dollar ($1.00) for the transfer of the title in each case, which was the sum tendered the said Commissioner of Motor Vehicles by each of the Appellants in connection with their applications, and (2) to issue to the Appellants certificates of title for their respective public passenger motor vehicles in accordance with the provisions of the Annotated Code of Maryland, without the payment of a tax of 2% of the fair market value of said vehicle as provided by Section

25A of Article 66½ of the Annotated Code of Maryland.

The Commissioner of Motor Vehicles filed demurrers to each of the petitions and the Superior Court of Baltimore City, overruling the demurrers, issued the Writs of Mandamus as prayed.

The Court of Appeals of Maryland, on appeal by the Commissioner of Motor Vehicles, reversed the action of the Superior Court of Baltimore City, with costs, and dismissed the petitions for Writs of Mandamus, whereupon the Petition of Appeal to the Supreme Court of the United States accompanied by Assignment of Errors and this jurisdictional statement, is submitted.

That a substantial Federal question is presented is demonstrated by these cases:

McCullough v. *Maryland*, 4 Law Ed. 579; 4 Wheaton 316;

Gibbson v. *Ogden*, 6 Law Ed. 23, 9 Wheaton 1;

Smith v. *Turner*, 12 Law Ed. 702, 7 Howard, 283;

Cook v. *Pennsylvania*, 97 U. S. 566, 24 Law Ed. 1015;

Fargo v. *Michigan* (Fargo v. Stevens) 121 U. S. 230, 30 L. Ed. 888, 7 S. Ct. 857, 1 Inters. Com. Rep. 51;

Philadelphia & S. Mail S. S. Co. v. *Pennsylvania*, 122 U. S. 326, 30 L. Ed. 1200, 7 S. Ct. 1118, 1 Inters. Com. Rep. 308;

Leloup v. *Mobile*, 127 U. S. 640, 32 L. Ed. 311, 8 Sup. Ct. 1380;

Galveston H. & S. A. R. Co. v. *Texas*, 210 U. S. 217, 52 L. Ed. 1031, 28 S. Ct. 638;

Meyer v. *Wells, F. & Co.*, 223 U. S. 298, 56 L. Ed. 445, 32 S. Ct. 218;

Williams v. *Talladega*, 226 U. S. 404, 419, 57 L. Ed. 275, 33 Sup. Ct. 116;

Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 400, 57 L. Ed. 1511, 1541, 33 Sup. Ct. 729, 48 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18;

United States Glue Co. v. *Oak Creek*, 247 U. S. 321, 328, 62 L. Ed. 1135, 1141, 38 Sup. Ct. 499, Ann. Cas. 1918E, 748;

Sprout v. *South Bend*, 277 U. S. 163, 171, 72 Law Ed. 833, 48 Sup. Ct. 562;

New Jersey Bell Tel. Co. v. *State Bd. of Taxes & Assessments*, 280 U. S. 338, 349, 74 L. Ed. 463, 469, 50 Sup. Ct. 111;

East Ohio Gas v. *Tax Commission*, 283 U. S. 465, 75 Law Ed. 1171, 51 Sup. Ct. 499;

Fisher's Blend Station v. *Tax Commission*, 297 U. S. 650, 655, 80 Law Ed. 956, 959, 56 Sup. Ct. 608;

Puget Sound Stevedoring Co. v. *Tax Commission*, 302 U. S. 90, *ante*, 64, 58 Sup. Ct. 72;

Western Live Stock v. *Bureau of Revenue*, No. 322, October Term, 1937 (303 U. S. 250, *ante*, 828, 58 Sup. Ct. 546, 115 A. L. R. 944);

Adams Mfg. Co. v. *Storen*, 304 U. S. 307, 82 Law Ed. 1365;

Gwin, White & Prince v. *Henneford*, 305 U. S. 434, 83 Law Ed. 272;

Best & Company v. *Maxwell*, 311 U. S. 454, 85 Law Ed. 274;

Nippert v. *Richmond*, 327 U. S. 416, 90 L. Ed. 760.

Taxes laid on interstate commerce without apportionment, or where inadequately apportioned are uniformly held invalid:

Norfolk & Western R. Co. v. *Pennsylvania*, 136 U. S. 114; 34 Law Ed. 394; 10 Sup. Ct. 958;

Allen v. *Pullman's Car Co.*, 191 U. S. 171; 48 Law Ed. 134, 24 Sup. Ct. 39;

Fargo v. *Hart*, 193 U. S. 490; 48 Law Ed. 761, 24 Sup. Ct. 498;

Union Transit Co. v. *Kentucky*, 199 U. S. 194; 50 Law Ed. 150, 26 Sup. Ct. 36;

Union Tank Line Co. v. *Wright*, 249 U. S. 275; 63 Law Ed. 602, 39 Sup. Ct. 276;

Wallace v. *Hines*, 253 U. S. 66; 64 Law Ed. 782, 40 Sup. Ct. 435;

Southern Ry. Co. v. *Kentucky*, 274 U. S. 76; 71 Law Ed. 394, 47 Sup. Ct. 542;

Johnson Oil Co. v. *Oklahoma*, 290 U. S. 158, 78 Law Ed. 238, 54 Sup. Ct. 152.

The following decisions of the Supreme Court of the United States are believed to sustain the jurisdiction of that Court on a direct appeal to review the final order, judgment or decree here in question:

Bush Co. v. *Maloy*, 267 U. S. 317, 69 Law Ed. 627, 45 Sup. Ct. 326;

Sprout v. *South Bend*, 277 U. S. 163, 72 Law Ed. 833, 48 Sup. Ct. 502;

Interstate Transit v. *Lindsey*, 283 U. S. 183, 75 Law Ed. 953, 51 Sup. Ct. 380;

Gwin, White & Prince v. *Henneford*, 305 U. S. 434, 83 Law Ed. 272, 59 Sup. Ct. 325;

Butler Bros. v. *McColgan*, 315 U. S. 501, 86 Law Ed. 991, 62 Sup. Ct. 701.

Respectfully submitted,

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Filed: May 5, 1949, Maurice Ogle, Clerk.

APPENDIX A

COURT OF APPEALS OF MARYLAND

No. 81

October Term, 1948

W. LEE ELGIN, COMMISSIONER OF MOTOR VEHICLES

vs.

CAPITAL GREYHOUND LINES

W. LEE ELGIN, COMMISSIONER OF MOTOR VEHICLES

vs.

PENNSYLVANIA GREYHOUND LINES, INC.

W. LEE ELGIN, COMMISSIONER OF MOTOR VEHICLES

vs.

RED STAR MOTOR COACHES, INC.

Marbury, C.J., Delaplaine, Collins, Grason, Henderson, Markell, JJ.

Opinion by COLLINS, J.

To be reported.
Filed: February 10, 1949.

These are three appeals by W. Lee Elgin, Commissioner of Motor Vehicles of the State of Maryland, (the Commissioner), appellant, from orders of the Superior Court of Baltimore City overruling his demurrers to petitions for mandamus filed by Capitol Greyhound Lines, a body corporate, (Capitol), Pennsylvania Greyhound Lines, Inc., a body corporate, (Greyhound), and Red Star Motor Coaches, Inc., a body corporate, (Red Star), appellees.

The petitions allege that the appellees are corporations engaged in the business of the public transportation of passengers for hire by motor vehicles. All of the appellees have operated pursuant to authority vested in them by the Interstate Commerce Commission. Appellee, Red Star, since 1938, has operated daily a passenger bus line be-

tween Rehobeth, Delaware, and Baltimore, a distance of approximately 120 miles, 64 miles of which are over state, state aid and improved county roads in Maryland. The particular operation is but part of an integrated bus system serving parts of Maryland, Delaware, and Pennsylvania. Appellee, Capitol, since November 30, 1930, has operated daily a passenger bus line between Cincinnati, Ohio, and Washington, D. C., a distance of approximately 496 miles, nine miles of which are over state, state aid and improved county roads of Maryland. Appellee, Greyhound, since April 25, 1930, has operated a passenger bus line between Philadelphia and Norfolk, a distance of approximately 245.3 miles. Greyhound operates the portion of the road between Philadelphia and the Maryland-Virginia state line, a distance of approximately 172.6 miles, 41 miles of which are over state, state aid and improved county roads of Maryland, the said route being a part of a nation wide integrated bus system.

Appellee, Red Star, transported over the above designated route for the period from June 1, 1947 to November 1, 1947, a total of 13,910 passengers producing total gross revenues of $21,087.18. 5,035 passengers in interstate commerce originating from or destined to points within Maryland thereby produced revenues of $11,324.41 of the aforesaid total gross revenues. Over this route it transported 6,577 intrastate passengers producing gross revenues of $9,015.89.

Appellee, Capitol, transported over its above designated route from October 1, 1946 to September 30, 1947, a total of 406,572 passengers with total gross revenues of $704,450. Of this number 1,509 traveled in interstate commerce producing $3,695.80 of the aforesaid total gross revenues. Over this route it transported in intrastate commerce 11 such passengers producing gross revenues of $3.25.

Appellee, Greyhound, over the above designated route from October 1, 1946 to September 30, 1947, transported a total of 168,684 passengers producing total gross revenues of $438,326.92. All of these passengers traveled exclusively in interstate commerce. Greyhound has no authority from the Public Service Commission of Maryland or from any

other agency authorizing it to transport passengers in intrastate commerce in Maryland.

Each of the appellees purchased a public passenger motor vehicle during the year 1947 necessary for use over its respective aforementioned routes and each obtained from the Public Service Commission of Maryland a permit authorizing it to operate this motor vehicle in interstate commerce over the roads and highways of the State of Maryland embraced in each of its respective routes. Red Star purchased its vehicle on July 18, 1947, at a cost of $18,637.50. Capitol's vehicle was purchased on July 18, 1947, at a cost of $25,258.70. Greyhound's purchase was made on October 22, 1947, at a cost of $29,002.60.

Capitol and Greyhound on January 8, 1948, and Red Star on January 12, 1948, applied to the Department of Motor Vehicles for the issuance of a certificate of title for the public passenger vehicles purchased by them and each presented the permit obtained from the Public Service Commission of Maryland. Each application was made on forms provided by the Department of Motor Vehicles and each appellee tendered to that Department the sum of $1.00 with each application for the issuance of a certificate of title for each motor vehicle.

Appellees allege that by Article 81, Section 218, of the Annotated Code of Maryland, (1947 Supplement), Chapter 326 of the Acts of 1947, the issuance of a certificate of title for a motor vehicle is a prerequisite to the issuance of a registration certificate and distinguishing plates and markers, and by Article 66½, Section 20 of the Annotated Code of Maryland, (1947 Supplement), a registration certificate and distinguishing plates and markers are required before any motor vehicle may be operated over the highways of the State of Maryland.

Those three applications for the issuance of a certificate of title were refused by the Commissioner and the sum tendered in payment was returned to the appellees. In each case the Commissioner alleged that the amount tendered was insufficient and that the applicants were required to pay an excise tax of two percent on the fair market value of each public passenger motor vehicle as required by Section 25A of Article 66½ of the Annotated Code of Mary-

land, (1947 Supplement), Chapter 560, Section 25A of the Acts of 1947, as a condition precedent to the issuance of the certificate of title, the issuance of the certificate of registration and the distinguishing plates and markers, although the Commissioner admitted that the appellees had complied with all other requirements entitling them to a certificate of title. The appellees further allege that the amount of the additional tax demanded by the Commissioner from Red Star is $372.75, from Capitol $505.17, and from Greyhound $580. The appellees allege that the Commissioner cannot require the payment of this additional tax for the reason that Section 25A of Article 66½, supra, would impose an unlawful burden on interstate commerce in violation of the commerce clause of the Federal Constitution. The appellees ask that a writ of mandamus be issued to the appellant commanding him to accept the $1.00 tendered and to issue to the appellees a certificate of title for the aforesaid public passenger vehicles without the payment of the said two percent tax.

After the overruling of demurrers filed by the appellant to each of these petitions, the trial judge issued an order that the writs of mandamus be issued. He further provided that the order in each case be stayed pending the final determination by this Court and further that the appellees be excused from filing an appeal bond. From those orders by the trial judge, the appellant appeals here.

For the purposes of this opinion, the following tabulation is offered by the appellees:

	Entire Route Traveled	Operation in Maryland	Amount of Tax
Red Star	120 Miles	64 Miles	$372.75
Capitol	496 Miles	9 Miles	505.17
Greyhound	172 Miles	41 Miles	580.00

Article 1, Section 8, Clause 2 of the Federal Constitution, hereinafter referred to as the "Commerce Clause", gives to the Congress of the United States the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

Section 25A of Article 66½, supra, provides in part: "(Excise Tax for the Issuance of Certificates of Title.) (a) In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued. * * * (c) The Department of Motor Vehicles shall remit all sums collected under the provisions of this section to the State Treasurer, who shall use and apply the same, first, to the extent required for debt service on State Highway Construction Bonds pursuant to Sections 147G to 147P, both inclusive, of Article 89B of the Annotated Code of Maryland (1939 Edition), as enacted by Section 18 of Chapter 560, Acts of 1947, and shall transfer the balance thereof, if any, to the construction fund for the State Roads Commission provided by Section 11 (e) of said Article 89B."

The titling of Chapter 560 of the Acts of 1947, supra, states in part that the Act is "to provide for the financing, planning, constructing and maintaining of public roads in the State". The Act itself so provides. The trial judge found that the proceeds were to be used for servicing the debt on State highway construction bonds and the balance, if any, went to the construction fund of the State Roads Commission and were to be specifically used for road purposes. The appellees do not dispute this. In fact they state in their brief: "The proceeds of the challenged tax are now expressly allocated to the construction and maintenance of prblic highways * * *." There is no dispute that the money from this tax is used specifically for road purposes.

The primary question before us is therefore whether this tax, used specifically for road purposes, although having no specific relationship to road use, is a violation of the commerce clause of the Federal Constitution. The appellees

contend that this state tax imposed on interstate carriers for the privilege of using the roads of this State, unless purely nominal in amount, is valid only if not more than compensatory and the amount of the charge must necessarily be predicated upon the use made or the use to be made of the roads of Maryland. In other words, they contend that the charge in dispute must bear some reasonable relationship to the privilege of using the Maryland highways and, if not, it is repugnant to the commerce clause of the Federal Constitution.

The appellant, on the other hand, contends that the tax here in question is a reasonable and nondiscriminatory tax imposed upon the privilege of using the roads of the State of Maryland and is constitutional regardless of whether the tax bears any specific relationship to road use.

By Chapter 560 of the Acts of 1947, here in question, for the first time the tax was made to apply not only to the original issuance of the title certificate but also to any subsequent transfer of title. The new act also provided for the first time that the proceeds of the tax are to be used first for servicing the debt on the State highway construction bonds and the balance, if any, is to be paid to the construction fund of the State Roads Commission.

Where a tax on interstate motor carriers is allocated to state highway funds, it is an imposition on the privilege of using the state roads and is not a violation of the commerce clause if reasonable in amount and nondiscriminatory. Interstate Transit, Inc. vs. Lindsey, 283 U. S. 183, 186, 75 L. Ed. 953, (1931); Morf vs. Bingaman, 298 U. S. 407, 412, 80 L. Ed. 1245, (1936); Ingles vs. Morf, 300 U. S. 290, 294, 81 L. Ed. 653, (1937); Aero Mayflower Transit Co. vs. Board of R. R. Commissioners, 332 U. S. 495, 505, 92 L. Ed. 153, (1947).

The question before us is therefore narrowed as to whether this tax imposed upon the privilege of using the State roads, having no specific relationship to road use, is reasonable and nondiscriminatory. The burden of the proof is on the taxpayer to show that the tax is unreasonable. Clark vs. Paul Gray, Inc., 306 U. S. 583, 83 L. Ed. 1001, (1939).

In Morf vs. Bingaman, supra, decided in 1936, the State of New Mexico by a statute denied to all persons the use

of the highways of the State for the transportation of any motor vehicle on its own wheels, for the purpose of selling it or offering it for sale without a special permit. For this permit the statute levied a fee of $7.50 if the vehicle was transported by its own power and $5.00 if it was towed or drawn by another vehicle. The appellant, a resident and citizen of California, purchased new and used automobiles in other states and transported them, on their own wheels, over state highways to California, where he offered them for sale. He usually transported such cars over the highways of New Mexico for a distance of about 165 miles in processions, or caravans. The Supreme Court of the United States said in that case at page 412: "As the tax is not on the use of the highways but on the privilege of using them, without specific limitation as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than a fee based on mileage, is not a forbidden burden on interstate commerce. See Clark v. Poor, 274 U. S. 554, 71 L. Ed. 1199, 47 S. Ct. 702, and Aero Mayflower Transit Co. v. Georgia Pub. Serv. Commission, 295 U. S. 285, 79 L. Ed. 1431, 55 S. Ct. 709, supra." It was further said at page 413: "There is nothing in the Fourteenth Amendment which requires classification for taxation to follow any particular form of words."

In the case of Dixie Ohio Express Company vs. State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, decided January 30, 1939, the appellant was an Ohio corporation engaged exclusively in interstate transportation as a common carrier of property for hire by motor vehicle including hauling between points in Georgia and points in other states. The State of Georgia imposed a maintenance tax on trucks and trailers used on State roads measured by the rated capacity or factory weight of the vehicle. This tax was from $50.00 to $75.00 annually. The Supreme Court of the United States said that consistently with the commerce clause of the Constitution a state could impose upon vehicles used exclusively for interstate transportation a fair and reasonable tax as compensation for the privilege of using its highways for that purpose. The Court in that case held that the language of the statute disclosed the intention of the State to require payment of compensation for the

privilege of operating over its roads the specified vehicles for the transportation of property. It further held that this tax contained no hint of hostility to interstate commerce or a purpose to impose a charge on the privilege or business of interstate transportation. The Court further pointed out that the appellant would not claim that the privilege to operate for a year one hundred pieces of its equipment over any or all of the State roads of Georgia was not worth $6,000.00, the amount of the taxes in controversy.' The Court pointed out that the amounts paid for license tags, public service tags and taxes on gasoline were without significance in the case.

In the case of Aero Mayflower Transit Co. vs. Board of Railroad Commissioners, supra, decided December 8, 1947, the State of Montana imposed a flat tax of $10.00 annually upon each vehicle operated by a motor carrier over the highways of that State and a fee of one-half of one percent of the carriers gross operating revenue from its operations in Montana with an annual minimum of $15.00 per vehicle in consideration of the use of the highways and in addition to all other motor vehicle license fees and taxes. The Supreme Court of the United States in that case pointed out that the two flat taxes, one for $10.00 and the other for $15.00, payable annually upon each vehicle operated on Montana highways were declared to be in addition to all others and to be imposed "in consideration of the use of the highways of this State". The Court further said: "It is far too late to question that a state, consistently with the commerce clause may lay upon motor vehicles engaged exclusively in interstate commerce, or upon those who own and so operate them, a fair and reasonable, nondiscriminatory tax as compensation for the use of its highways. * * * And the aggregate amount of the two taxes taken together is less than the amount of similar taxes this Court has heretofore sustained. Cf. Dixie Ohio Exp. Co. *v.* State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, 59 S. Ct. 435, supra; Aero Mayflower Transit Co. *v.* Georgia Pub. Serv. Commission, 295 U. S. 285, 79 L. Ed. 1439, 55 S. Ct. 709, supra." The Court further said: "The exactions in the present case fall clearly within the rule of Morf *v.* Bingaman and its predecessors in authority, and therefore,

like that case, outside the decisions in the Interstate Transit and like cases. Both taxes are levied 'in consideration of the use of the highways of this state,' that is, as compensation for their use, and bear only on the privilege of using them, not on the privilege of doing the interstate business. Moreover, the flat $10 fee laid by § 3847.16 (a) is further identified as one on the privilege of use by the fact that 'unlike the general tax in Interstate Transit *v.* Lindsey, 283 U. S. 183, 75 L. Ed. 953, 51 S. Ct. 380, the levy of which was unrelated to the use of the highways, grant of the privilege of their use is by the present statute made conditional upon payment of the fee.'" In holding that the flat minimum of $15 annually was not unreasonable, the Court further said: "And appellant has advanced no tenable basis in rebuttal of the legislative declaration that this tax too is exacted in consideration of the use of the state's highways, i.e., for the privilege of using them, not for that of doing the interstate business. Here, as in Morf *v.* Bingaman, 'there is ample support for a legislative determination that the peculiar character of this traffic involves a special type of use of the highways,' with enhanced wear, tear and hazards laying heavier burdens on the state for maintenance and policing than other types of traffic create. 298 U. S. 407, 411, 80 L. Ed. 1245, 1249, 56 S. Ct. 756. It is to compensate for these burdens that the taxes are imposed, and appellant has not sustained its burden, Clark *v.* Paul Gray, Inc. supra (306 U. S. at 599, 83 L. Ed. 1013, 59 S. Ct. 744), and authorities cited, of showing that the levies have no reasonable relation to that end. It is of no consequence that the state has seen fit to lay two exactions, substantially identical, rather than combine them into one, or that appellant pays other taxes which in fact are devoted to highway maintenance. For the state does not exceed its constitutional powers by imposing more than one form of tax. Interstate Busses Corp. *v.* Blodgett, 276 U. S. 249, 72 L. Ed. 551, 48 S. Ct. 230, supra; Dixie Ohio Exp. Co. *v.* State Revenue Commission, 306 U. S. 72, 83 L. Ed. 495, 59 S. Ct. 435, supra. *And, as we have said, the aggregate amount of both taxes combined is less than that of taxes heretofore sustained.* In view of these facts there is not

even semblance of substance to appellant's contention that the taxes are excessive." (Italics supplied here).

The largest tax before us here is in the amount of $580. Considering the life of the vehicles in this case, it is reasonable to suppose that such a vehicle will be in operation for at least five years. Assuming that five years is the standard life of the vehicle, the tax would be $116.00 a year. In view of the three late decisions of the Supreme Court of the United States just reviewed, Morf *vs.* Bingaman, supra: Dixie Ohio Express Co. *vs.* State Rev. Com., supra; Aero Mayflower Transit Co. *vs.* Board of R. R. Com., supra, we cannot say that the tax here in question must have a specific relationship to road use. When the Supreme Court of the United States said in the case of Dixie Ohio Express Co. *vs.* State Rev. Com., supra, that a yearly tax of from $50 to $75 on equipment not worth $6,000 is not discriminatory or unreasonable, we cannot say that a tax of $116.00 a year on a vehicle whose value is $29,000 is unreasonable or discriminatory. The amount of the tax here appears to be less than other taxes heretofore sustained by the Supreme Court of the United States. Aero Mayflower Transit Co. *vs.* Board of Railroad Commissioners, supra.

In this case no argument, or analysis of statistics in the petitions, has been presented on the question whether the tax, as applied to any particular one of the three cases before us is unreasonable or discriminatory. At the argument in this Court both parties were asked specifically whether the ruling of this Court might be different in one of the cases before us than in another. Neither party made any distinction in this respect. We were informed by the appellees that this was an "industry suit". In the circumstances it does not seem necessary or advisable for us to engage in statistical studies on a possible factual question which has not been raised.

Appellees further contend that the provisions of Section 218 of Article 81 and of Section 293 of Article 56 of the Annotated Code of Maryland render the imposition of the titling tax upon the appellees and other similarly situated invalid.

As Section 293 of Article 56 relates to intrastate carriers, we cannot see how that Section has any bearing on the

case before us, except to show that the two sections mentioned do not discriminate against interstate commerce.

Section 218 of Article 81 was first enacted as Chapter 593, Section 199 of the Acts of 1933, and is commonly known as the "seat-mile tax". This Section requires each owner of a motor vehicle to be used in interstate transportation of passengers for hire to pay a tax based on the number of passenger seats in the vehicle. It provided in part: "and no other additional fees, licenses or tax, shall be charged by the State or any County or municipal sub-division of the State except the property tax and gasoline tax on gasoline purchased in Maryland in respect to such vehicles or their operation." The only amendment to that Act is by Chapter 326, of the Acts of 1947, when the only change made was a reduction in the amount of that tax. The aforesaid quoted provision providing that "no other additional fees, licenses or tax, shall be charged" has remained in the Act since 1933 and remains in the Act as re-enacted by Chapter 326, of the Acts of 1947.

Appellees contend that Code, Article 66½, Section 25A, Chapter 560, Section 25A, of the Acts of 1947, here in question, and Code, Article 81, Section 218, Chapter 326, of the Acts of 1947, supra, cannot both be applied to the same vehicles and the Legislature never intended that Chapter 560, supra, be applicable to carriers subject to the provisions of Chapter 326, supra, and, as Chapter 326 provides that no other tax shall be levied, Chapter 560, supra, is not applicable to the appellees. Both Chapter 326 and Chapter 560 of the Acts of 1947 were approved by the Governor on April 16, 1947. The appellees say that as Chapter 326 was passed as an emergency measure, and hence became effective on the date of executive approval, (April 16, 1947), and Chapter 560 was not enacted as an emergency measure and hence did not become effective until June 1, 1947, the latter Act, Chapter 560, may be said to be the more recent law of the two acts. They contend that these two Acts patently "contain inconsistent and contradictory provisions, if Chapter 560 is to be construed as applying to carriers subject to the provision of Chapter 326." The appellees further contend that there is nothing in the language of Chapter 560 which repeals the provisions

of Chapter 326 and that a repeal by implication is not favored. Buchholtz *vs.* Hill, 178 Md. 280, 288; Pressman *vs.* Elgin, — Md. —, 50 A. 2d 560.

As pointed out by the appellees, where two or more acts of the Legislature are approved by the Governor on the same day, the later act in numerical order of chapters is considered the last expression of the legislative will. State *vs.* Davis, 70 Md. 237, 240; Musgrove *vs.* B. & O. R.R. Co., 111 Md. 629. We agree that as between Chapter 326 and Chapter 560, of the Acts of 1947, the latter is the more recent.

If there is any inconsistency between these two acts, Chapter 326 must yield to Chapter 560. This Court has stated on many occasions that the act passed last must prevail. Davis *vs.* State, 7 Md. 151, 159; Albert *vs.* White, 33 Md. 297, 305; Appeal Tax Court *vs.* Western Md. R. R. Co., 50 Md. 274, 296; Yunger *vs.* State, 78 Md. 574, 577; Musgrove *vs.* B. & O. R.R. Co., supra; Beall *vs.* Southern Md. Agri. Ass'n., 136 Md. 305, 312. The appellees here admit that Chapter 560 is the more recent law of the two acts. We must therefore hold to the extent of the conflict between Chapter 326 and Chapter 560, that Chapter 560 prevails and the prohibition of Chapter 326, of the Acts of 1947, cannot apply to the taxes imposed by Chapter 560, of the Acts of 1947.

Appellees further contend that the titling tax, Article 66½, Section 25A, (1947 Supplement of the Code), supra, here in question, has never been applied to interstate vehicles until after the amendment by Chapter 560, of the Acts of 1947, and therefore the construction placed upon that tax by administrative interpretation has obtained the force of law. Popham *vs.* Conservation Commission, 186 Md. 62, 71; Bouse *vs.* Hutzler, 180 Md. 682, 687; Atkinson *vs.* Sapperstein, — Md. —, 60 A. 2d 737, 740. We must note, however, that in the past the tax here in question has been applied at various times to the "State Emergency Relief Fund" and to the "State Fund for Aid to the Needy" and for the first time by Chapter 560, of the Acts of 1947, the proceeds of this tax have been applied specifically to road purposes. Evidently it was thought that because the tax, here in question, was not applied specifically to road

purposes it could not be levied on interstate commerce and for that reason was not levied on the appellees, but now that the tax is specially applied to road purposes, it can be applied to the appellees. This explains the former administrative interpretation.

For the reasons herein given, we are of opinion that the demurrers to the petitions should have been sustained and the petitions of the appellees dismissed.

Orders reversed, with costs, and petitions dismissed.

APPENDIX "B"

OPINION OF SUPERIOR COURT OF BALTIMORE CITY

SHERBOW, J.:

Three interstate bus lines filed petitions for writs of mandamus against the Commissioner of Motor Vehicles to compel the issuance of certificates of title to motor buses without the payment of the 2% titling tax imposed by Section 25A of Article 66½ of the Code, 1947 Supplement.

Demurrers have been filed raising the following questions:

1. Does the 2% titling tax violate the commerce clause of the Federal Constitution as applied to interstate carriers?

2. Does Section 218 of Article 81 of the Code, as amended by Chapter 326 of the Acts of 1947, prohibiting the imposition of "additional fees, licenses or tax," include the 2% titling tax?

I

By various provisions of the law an interstate carrier, operating within the State of Maryland, is required to register its vehicles in this State.[1] Motor vehicle owners using vehicles in the interstate transportation of passengers over State roads are required to obtain permission covering such operation from the Public Service Commission of

[1] Code Article 66½, Sec. 21.

Maryland.[2] The carrier cannot register its vehicles or operate over Maryland highways until a certificate of title is obtained for each vehicle.[3] Payment of $1.00 is required for the registration card and certificate of title.[4]

In addition a "seat mile tax" is imposed. This is a levy equal to one-thirtieth of a cent for each passenger seat multiplied by the total number of miles travelled over the State roads.[5]

The Department of Motor Vehicles seeks to require these interstate carriers to pay an excise tax of two per cent of the fair market value of every vehicle upon the issuance of every original certificate of title, and for every subsequent certificate in the case of sales of the vehicles, in accordance with the provisions of Section 25(a) of Article 66½, as amended by Chapter 560 of the Acts of 1947.[6]

The titling tax was first levied in Maryland in 1935 at the rate of one per cent and the proceeds were paid into a special account in the State Treasury called the "State Emergency Relief Fund."[7] Later the Act was amended to provide that the proceeds be paid into the "State Fund for Aid to the Needy."[8] In 1939 the levy was increased to two per cent, and the proceeds were paid into the general funds of the State.[9]

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[2] Article 81, Sec. 218, as amended by Chapter 326 of the Acts of 1947.

[3] Article 66½, Sec. 22, as amended by Chapter 17 of the Acts of 1947.

[4] Article 66½, Sec. 25.

[5] Article 81, Sec. 218, as amended above.

[6] The Section reads:

"In addition to the charges prescribed by this Article there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for motor vehicles in this State and for the issuance of every subsequent certificate of title for motor vehicles in this State in the case of sales or resales thereof, and on and after July 1, 1947, the Department of Motor Vehicles shall collect said tax upon the issuance of every such certificate of title of a motor vehicle at the rate of two per centum of the fair market value of every motor vehicle for which such certificate of title is applied for and issued."

[7] Chapter 539, Acts of 1935.

[8] Chapter 3, Acts of 1936.

[9] Sec. 74, Chapter 277, Acts of 1939.

Chapter 560 of the Acts of 1947 made several important changes in the law. The tax was made applicable not only to original title certificates but to subsequent transfers. The proceeds were to be used for servicing the debt on State highway construction bonds, and the balance, if any, went to the construction fund of the State Roads Commission.

Thus it appears that in 1947, for the first time, the proceeds of this excise tax on motor vehicles were to be used specifically for roads purposes. Prior to 1947 the petitioners and all other interstate carriers similarly situated were not required to pay the tax.

When the titling tax was first enacted an effort was made by the Motor Vehicle Commissioner to collect the tax from interstate carriers. Mandamus proceedings were instituted by the Pennsylvania Greyhound Transit Company in the Court of Common Pleas on February 12, 1936, to compel issuance of certificates of registration without payment of the tax. The petition alleged that no part of the proceeds was used directly or indirectly in connection with the State's roads or for the expenses of the office of the Commissioner of Motor Vehicles. After considering the law, the Attorney-General instructed the Commissioner to issue the certificates without payment of the tax and thereupon the Court granted the writ of mandamus as prayed, stating in the order that it was of the opinion that the law did not apply to any motor vehicle bus operating in interstate commerce.

By the 1947 amendment the proceeds will be used for roads purposes, and the interstate carriers now seek to prevent the State from collecting the two per cent titling tax from them.

The Court must decide whether this excise tax constitutes a direct and material burden on interstate commerce. In other words, may this tax lawfully be imposed on public passenger motor vehicles using the highways of Maryland in interstate commerce? The language of the statute itself is all-inclusive; it makes no exception in favor of interstate carriers.

The commerce clause of the Federal Constitution has caused more litigation and controversy than any other constitutional provision. Interstate carriers may be required

to pay registration, licensing and transportation taxes of various kinds in each State of operation.

Many cases have been decided by the Supreme Court dealing with the question of whether the States may lawfully impose a tax on interstate carriers.

A non-discriminatory tax, not confiscatory in amount, fixed by a uniform, fair and practical standard, was upheld as constituting no burden on interstate commerce in an early case arising out of the Maryland requirement that non-residents obtain and pay registration fees if they used our highways.[10] In the absence of actual discrimination the State may tax interstate carriers by a method different from that applied to intrastate carriers.[11]

States may impose taxes for the use of the roads and enforcement of regulations, whether on the basis of gross ton mileage,[12] or a flat charge per vehicle,[13] or on vehicles engaged exclusively in interstate commerce.[14] More than one tax may be imposed and the proceeds may go into the State's general fund, provided the taxes are fair and reasonable, non-discriminatory, and are compensation for the use of the highways.[15]

A flat tax, substantial in amount; the same for buses used continuously in local service as for interstate buses making one trip daily, was not upheld, the Court stating that such a tax "could hardly have been designed as a measure of the cost of value of the use of the highways."[16]

A privilege tax imposed by the State of Tennessee on interstate bus operators graduated according to the carrying capacity of the vehicle, and amounting to about $500 for a medium size vehicle, was held invalid as applied to interstate operators. In the case of Interstate Transit, Inc.

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[10] *Hendrick* v. *Maryland*, 235 U. S. 610 (1915).

[11] *Interstate Buses Corp.* v. *Blodgett*, 276 U.S. 245.

[12] *Continental Baking Co.* v. *Woodring*, 286 U. S. 352.

[13] *Aero Mayflower Transit Co.* v. *Georgia P.S.C.*, 295 U. S. 285.

[14] *Dixie Ohio Express Co.* v. *State Rev. Comm.*, 306 U. S. 72.

[15] *Aero, etc.*, v. *R. R. Comms.*, 332 U. S. 495 (1947).

[16] *Sprout* v. *South Bend*, 277 U. S. 163.

v. Lindsey, 293 U.S. 193 (1931), the Supreme Court, speaking through Mr. Justice Brandeis, said:

> "A detailed examination of the statute under which the tax here challenged was laid makes it clear that the charge was imposed not as compensation for the use of the highway but for the privilege of doing the interstate bus business. * * *
>
> "It is suggested that a tax on buses graduated according to carrying capacity is common and is a reasonable measure of compensation for use of the highways. It is true that such a measure is often applied in taxing motor vehicles engaged in intrastate commerce. * * * But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only as compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State. In the present act the amount of tax is not dependent on such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except insofar as this is indirectly affected by carrying capacity. The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed or the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate buses."

In the recent case of Aero Transit Co. *v.* Commissioners, 332 U. S. 495, decided December 8, 1947, the Supreme Court upheld two Montana levies. One was a flat tax of $10.00 for each vehicle operated over the State's highways, and the other was a quarterly fee of one-half of one per cent of the motor carrier's gross operating revenue with a minimum annual fee of $15.00 per vehicle. The tax was

declared expressly to be laid "in consideration of the use of the highways of the State," and in addition to all other licenses, fees and taxes. The Montana Supreme Court held that "gross operating revenue" meant only such revenue as was derived from the carrier's operations within Montana, not outside that State. The Supreme Court of the United States limited its consideration of the "gross revenue" tax to the flat $15.00 minimum fee because of the doubt raised as to the basis of calculation above that figure. The Court said:

> "With the issues thus narrowed, we have, in effect, two flat taxes, one for $10.00, the other for $15.00 payable annually upon each vehicle operated on Montana highways in the course of appellant's business, with each tax expressly declared to be in addition to all others and to be imposed 'in consideration of the use of the highways of this State.'
>
> "Neither exaction discriminates against interstate commerce. Each applies alike to local and interstate operations. Neither undertakes to tax traffic or movements taking place outside Montana, or the gross revenues from such movements or to use such revenues as a measure of the amount of the tax. * * *"

In this case the Supreme Court held that it was immaterial that the proceeds of the two taxes go into the State's general fund for general State purposes. The taxes were "laid for the privilege of using the highways" and their aggregate amount was less than similar taxes already sustained.

These cases and the many others cited by counsel in their excellent and complete briefs, and in argument, set out the principles to govern the Court in determining whether or not the Maryland two per cent titling tax is valid as applied to these interstate carriers.

This excise tax is based on the fair market value of the vehicle when titled. The amount of the tax bears no relationship, reasonable or direct, to the use of the highways of the State.

Wear and tear on the highways, mileage travelled, weight of the vehicles, carrying and earning capacity, are not the

yardstick used for measuring the impost, but only the value of the vehicle when titled.

It is not an annual tax falling on all in like position equally. It is paid only when title changes. A carrier making frequent replacements of its equipment is penalized in favor of one who keeps old vehicles on the highways.

The tax is a heavy one, and on present day costs ranges from $400 to $600 as each new vehicle is titled. To avoid the impost carriers may well utilize new equipment elsewhere transferring old and less valuable vehicles to their Maryland run.

The striking inequalities of the application of the tax are shown when we compare each company's operation in Maryland with the entire route travelled, as shown by the following table:

	Entire Route Traveled	Operation in Maryland
Red Star	120 Miles	64 Miles
Capital	496 Miles	9 Miles
Greyhound	172 Miles	41 Miles

If each carrier purchased a bus for $20,000 and paid $400 titling tax, the inequalities are self-evident, If Red Star purchased a secondhand bus for $10,000 and used it over 64 miles of Maryland roads it would pay $200 tax. If Capital purchased (as it actually did) a vehicle costing slightly over $25,000, it would pay $500. Red Star operates over 64 miles of Maryland roads and Capital only 9 miles in Maryland.

When the tax is paid again depends not on conditions arising directly from operations in Maryland, but a host of other factors, including general economic conditions, availability of equipment, the financial condition of the individual carrier, etc.

The disparity in the impact of the tax becomes even more apparent when revenues derived from interstate operations in Maryland are considered. The data furnished the Court is not complete, but it shows clearly that based upon passenger revenues and passengers carried, the amount of the tax bears no reasonable relationship to the use of Maryland highways.

It may be argued that the tax is non-recurring as applied to a particular vehicle, and when measured over the life of the vehicle may not be burdensome. But the tax is on the *value* of the vehicle, not its *use* on the highways. The effect on each carrier is different and it varies from year to year; not according to mileage in Maryland, but to other factors.

It is not the frequency of use that determines the tax, nor revenues, nor anything else pertaining to highway operations, only when it is purchased and for how much.

Such a tax, aside from being discriminatory and bearing no relationship to highway use, is a burden on interstate commerce. The tax is high and if valid in Maryland may well be imposed elsewhere. States, like all other political sub-divisions, are constantly seeking new sources of revenue. Such an impost when applied to interstate commerce may well become a most serious economic burden. A carrier operating in several States and required to make heavy replacements might well find itself unable to do so because of the impact of the tax in several States.

Viewing the situation realistically, we must also bear in mind that while the tax was only one per cent when first levied and was increased to two per cent, after four years, it may be increased again. The history of taxation, especially gasoline and income taxes, shows that steady and sometimes precipitate increases occur, and while they may be decreased, they are rarely withdrawn.

The tax imposed on interstate carriers and approved by the Courts all relate to use of the highway with the tax measured by some fair standard, or where the tax or fee is so small as to be a fair contribution to the cost of administration or maintenance of the roads system. Registration fees are on an annual basis; gasoline taxes are based in practical effect on consumption and use. These and all other taxes that have been upheld are paid by all similarly situated at the same time. In no instance have counsel or the Court been able to find such a tax levied on interstate carriers based on the *value* of the vehicles.

The Court finds that as applied to these interstate carriers and others similarly situated the tax is invalid and the relief

prayed will be granted. An appropriate order will be signed when presented.

II

Section 218 of Article 81, dealing with motor vehicles used in interstate transportation, provides that after the levying of the taxes therein mentioned "no other additional fees, licenses or tax, shall be charged by the State or any County or Municipal subdivision of the State except the property tax and gasoline tax on gasoline purchased in Maryland in respect to such vehicles or their operation."

Section 293 of Article 56 is to the same effect and is applicable to intrastate operations. Counsel urge that these provisions forbid the imposition of the 2% titling tax. The Court's views having been expressed, holding this titling tax invalid as applied to interstate carriers, and the titling tax applicable to intrastate vehicles not being before the Court, it becomes unnecessary to discuss this contention.